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SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 465th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 4 May 2001, at 3 p.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.465/Add.1.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Initial report of Bolivia (continued) (CAT/C/52/Add.1)

1. At the invitation of the Chairman, the members of the delegation of Bolivia took places at the Committee table.

2. Mr. SERRATE CÉSPEDES (Bolivia), replying to questions raised by members of the Committee at the previous meeting, said that his Government had made a concerted effort to adopt major international instruments and hoped to complete its ratification of the human rights instruments in 2001. In the specific case of the Convention, it intended to reconsider its reservation to article 20 and to consider making the declaration provided for under articles 21 and 22.

3. Between April and September 2000, the Government had produced a 200-page report on all incidents of human rights violations in the country which it was submitting to the Committee. The report was objective and thorough, and would serve as the basis for all victim compensation decisions in Bolivia's Chamber of Deputies and Human Rights Commission.

4. The statement had been made that as many as 80 per cent of those convicted of crimes were still awaiting sentencing; delayed justice was indeed a serious problem in Bolivia. While the new Code of Criminal Procedure, adopted in 1999, would take full effect only at the end of the current month, some of its provisions, such as the 8-hour and 24-hour periods mandated for investigation of suspects and their appearance before a judge, were already being implemented.

5. Until the Code of Criminal Procedure became fully operative, the situation had clearly required some action by the Government. To replace the corrupt system of unpaid public defence attorneys in effect prior to 1994, the National Public Defence Programme had been established as a unit within the Ministry of Justice and Human Rights, funded largely from the national budget and Civil Service Department resources, with assistance from the World Bank, the United States Agency for International Development (USAID) and, in the least developed rural areas, the Swiss Agency for Development and Cooperation (SDC). The Programme's public defenders, who must be apolitical civil servants, provided free legal aid to criminal suspects and defendants. To eliminate the conflict of interest the Programme funded in large part by the Executive branch, the Government would shortly promulgate a supreme decree making it an independent service, on the Argentine model, and as such it would stand as a counterpart to the Office of the Ombudsman. The Ministry of Justice and Human Rights was drafting a bill to allocate 4 per cent of the Executive branch budget to the new National Public Defence Service, thus quadrupling the service's resources and establishing it on a firm footing. The public defenders provided 60 per cent of the legal assistance to detainees in Bolivia, and without them penal reform would be impossible and due process could not be guaranteed.

6. Among the other remedies that were available to avoid prolonged incarceration, the 1996 Act relating to Sworn Recognizance to Avert Delays in Criminal Justice had made it possible to provisionally release hundreds of persons on their own recognizance. Also, the Office of the Ombudsman and the Catholic Church had jointly drafted the Pardon 2000 Act, under which 2,600 of the 8,000 prisoners currently incarcerated in Bolivia had already been pardoned or had their sentences reduced.

7. The administrative improvements introduced by the new Code of Criminal Procedure would, as indicated in the report (paras. 109 and 110), guarantee swifter justice and due process free from corruption. Among the innovations was a clear definition of what constituted a victim; the election of lay judges to assist trial judges; and recognition of judicial decisions handed down by indigenous community and peasant authorities, provided such decisions did not violate the Constitution. A first draft of the Community Justice Act, for instance, specifically proscribed certain indigenous traditions like flagellation and the death penalty. Under the new Code of Criminal Procedure, a suspect could be charged with an offence only if the investigating authorities had gathered sufficient evidence to do so, at which point the person became a defendant.

8. Public prosecutors reported to the Office of the Attorney-General. Moreover, under the new Public Prosecutor's Office Organization Act which had just gone into effect, the Technical Judicial Police conducting an investigation were subordinate to the public prosecutor directing the investigation. Some 95 per cent of all prosecutors were independently selected by competitive examinations.

9. The maximum sentence permissible under Bolivian law was 30 years. A proposed constitutional amendment would explicitly exclude the death penalty and life imprisonment.

10. Act No. 1008 on the prohibition of drug trafficking had rightly been declared unconstitutional because it did not allow for the presumption of innocence, and with that decision, so long sought by the legal profession, a major blow had been struck for justice and the restoration of fundamental rights. It should be recalled, however, that past Governments and political parties, and indeed the whole of Bolivian society, had become prisoner to the traffic in drugs, 40 per cent of which were consumed in Bolivia itself, a situation which had created a separate underground drug-based economy. The kind of cocaine grown in the Chapare region in Cochabamba Province was never intended for medicinal, religious or traditional consumption of coca leaves, but rather for illicit uses. The Government's alternate crop-substitution programme in Chapare had not been as successful as hoped, and the region's economy had plummeted, creating social and political upheaval.

11. In tackling the drug problem Bolivia was trying to proceed with caution and above all to avoid the violence and internecine killings that were occurring in neighbouring countries. Unfortunately, there had been some human rights violations by the police or the military who were seeking to control drug trafficking. As a recourse, the Chamber of Justice and Human Rights in the Chapare region had been set up, comprising independent medical doctors and investigating attorneys who, using the remedies of habeas corpus, amparo proceedings and the personal recognizance law, could bring charges against the police or the military. Under that

programme, 1,500 unjustly accused prisoners had been set free. In addition, the 1997 Human Rights Promotion and Protection Programme referred to in the report (paras. 57 and 58) had thus far trained about 2,000 police officers and military personnel. The Government had made the teaching of human rights obligatory in all police and military academies and was planning to extend the requirement to other institutions.

12. With regard to the situation in prisons, a bill on criminal enforcement and supervision was in the final stages of enactment and would enter into force following an 18-month period of vacatio legis. Under the new law, responsibility for the prison regime would be transferred from the Ministry of the Interior to the Ministry of Justice and Human Rights. The bill provided for a whole range of new measures such as the "two-for-one" option (two days' work for one day's sentence) whereby prisoners sentenced to a prison term of, for example, 30 years could be released after serving 15 years if they volunteered to participate in a work programme as a form of occupational therapy. The principle underlying the new legislation was that offenders were not imprisoned in order to be removed from society but to be rehabilitated and returned to society as useful human beings. The new law would also provide for a comprehensive prison health care system, separate facilities for women and men and for children and adults. Persons convicted of serious crimes would be held in separate units, and provision was made for open and semi-open regimes.

13. With regard to the cases of Freddy Cano López and Miguel Angel Rivero Siles, every effort was being made to ensure that the police officers and prison officials responsible for the deaths of those individuals were expelled from public service and punished with the full rigour of the law, thereby serving as an example to other public officials.

14. The Ministry of Justice and Human Rights and the Office of the Ombudsman had agreed to request that the provision for a state of siege, during which fundamental human rights were suspended, should be omitted from the most recent legislation to amend the Constitution. The Supreme Decree introducing the state of siege that had been in force from 1995 to 2000 had never been published in the Official Gazette, although that was a constitutional requirement. The Ombudsman had therefore taken the view that persons imprisoned pursuant to that Decree had been detained illegally, and she had filed an application for amparo on their behalf to the Constitutional Court. The Court had ruled in her favour, and the detainees had been released immediately and awarded compensation.

15. The authorities were working on an improved version of the new Criminal Code, including the provision concerning torture, which they hoped to submit for adoption in October 2001. It would contain all the offences set forth in the Inter-American Convention against Corruption and all offences, including torture, contained in existing international humanitarian law instruments. The authorities were also determined to implement all decisions of the Inter-American Court of Human Rights concerning Bolivia. A bill on compensation for victims of political violence was currently before the Chamber of Deputies and, if all went well, would be enacted by August 2001.

16. Bolivia would be grateful to the Committee if it could recommend a five-year extension of the country's human rights training programme, which was being conducted with assistance from the United Nations Development Programme (UNDP) and the Office of the United Nations High Commissioner for Human Rights and was due to end the following month. Special courses were run for the police, military officers and non-governmental organizations (NGOs), and human rights were being incorporated in the curricula of all Bolivian universities.

17. The new Public Prosecutor's Office Organization Act would ensure that in future investigations were conducted on an impartial basis. Pre-trial detention would become the exception rather than the rule. The police would be required to use all available technical facilities to gather evidence in support of a case, and the prosecutor and judge would then decide on the appropriateness of detention. Confessions signed under duress obviously had no evidentiary value.

18. Under the new Code, rape within marriage was a punishable offence. Compensation could be awarded for both moral and material damage. Under the bill concerning compensation for victims of political violence, the State would be required to provide psychological assistance to victims and assume responsibility for all damage to their mental health. Pecuniary damages would be payable either for a specific period or for the remainder of the victim's life.

19. Mr. Waldo Albarracín, the President of the Permanent Human Rights Assembly, was not only a prominent human rights defender but also a mediator in social conflicts between civil society and the Government. The Bolivian authorities vigorously condemned the attempt on his life in early 1997. The Ministry of Justice and Human Rights had offered him its full support and had exerted strong pressure on the courts and the Office of the Prosecutor to bring the perpetrators to justice.

20. Mr. Roger Candia Vallejas, a military conscript, had died following a beating by superior officers. The Human Rights Office in Riveralta was taking legal action on behalf of his family. A number of suspects had been detained and the guilty party or parties would be punished as appropriate.

21. A bill on productive work in prisons was being considered by the Constitution, Justice and Judicial Police Committee in coordination with the Human Rights Committee of the Chamber of Deputies. Under the bill, prisons would become industrial and vocational training centres through an alliance between private entrepreneurs and the State. Prison inmates would account for 90 per cent of the staff employed in such projects. They would enjoy all the rights and guarantees set out in the country's labour laws. Where appropriate, a portion of the wages paid would be allocated for compensation for civil damages, a second portion would be transferred to the inmate's family and a third would be deposited in a bank for use by inmates on release. Branches of banks would be established in the prison system. The basic facilities for productive work had already been established. Violence in prisons was virtually unknown and, with the revocation of Act No. 1008, the prison population would be drastically reduced.

22. With regard to the 1996 "Christmas massacre" in Amayapampa and Capasirca, an application had been made in Congress for the institution of legal proceedings against former President Gonzalo Sánchez de Losada. Investigations and a trial were necessary to identify the culprits and the extent of their responsibility. Negotiations had taken place between the family members of victims and the State, and an agreement regarding compensation had been concluded. Compensation had been paid to all signatories a month previously. A request for supplementary compensation was under consideration, and a report thereon would be submitted to the Government in due course. He would inform the Committee of the outcome.

23. Lastly, he said that an investigation into the case of Raquel Gutierrez had led to the conclusion that Ms. Gutierrez's rights had been violated owing to the regrettable delay in proceedings. She had been released and was deemed innocent, as her guilt had never been established by due process of the law.

24. Mr. GONZÁLEZ POBLETE, speaking as Country Rapporteur, said that a political will to overcome shortcomings which were the legacy of a difficult past certainly existed in Bolivia. He welcomed the new Code of Criminal Procedure and the many bills mentioned by the delegation. Legal and penal reform were not easy, and he wondered what training had been received by public prosecutors and judges who had an important role to play in implementing those reforms. He looked forward to receiving additional information and an update on the situation. In view of the numerous deficiencies noted with regard to other human rights issues closely related to torture, it might be preferable for the next periodical report to be submitted before another four years elapsed, so that the Committee could ascertain whether the expectations raised by the new Government had been fulfilled.

25. Although the question concerning rehabilitation had gone unanswered, he hoped that the Government would devote some attention to its duties in that field. Referring to paragraph 77 of the report, he asked what compensation was granted for psychological and non-material damage, as the replies given by the delegation on that count had been inadequate. According to generally accepted norms, a State was liable for the consequences of action by public officials. In the Bolivian legal system, that meant that families of deceased persons had to bring action against the State in order to obtain compensation, but it was clear that the process was extremely slow and therefore inconsistent with the spirit of article 14.

26. No information had been provided about conditions in remand prisons or about the number of persons who languished there for months in what was, in effect, a legal limbo. He believed that in big towns that number was substantial. Since the new Code of Criminal Procedure placed severe restrictions on pre-trial detention, those institutions would have to be closed. He hoped that the Public Prosecutor's Office would ensure that suspects or accused persons could avail themselves of the services of a lawyer from the outset of proceedings. Evidence should not be considered admissible by a court unless counsel had been present when a statement was made.

27. Mr. SERRATE CÉSPEDES (Bolivia) said that attempts were being made to speed up judicial proceedings and improve the training of the police. The new Code was in fact already being implemented, and the courts had dealt with far more cases in the first few months of 2000 than they had in the whole of 1999. It was perhaps better that the guilty should go free than that the innocent should suffer unjustly. The Committee had been provided with two copies of the new Code, and he trusted that the international community would continue to assist his country, which greatly needed technical, legal and financial help to press ahead with the reforms he had outlined in his presentation.

The public part of the meeting rose at 4. 35 p.m.